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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
6

7 CATHRYN GOVEREAU,

8 Plaintiff,

9 v.

10 KENT L WELLISH, M.D., *et al.*,

11 Defendants.
12

Case No. 2:12-CV-00805-KJD-VCF

ORDER

13 Before the Court is Defendants' Motion for Judgment on the Pleadings (#13). Plaintiff has
14 filed an opposition (#14) and Defendant has replied (#15).

15 **I. Background**

16 Plaintiff was employed by Defendants until she quit in January, 2012. Plaintiff alleges that
17 Defendants did not pay her lawful wages and has filed suit pursuant to the Fair Labor Standards Act,
18 29 U.S.C. § 201, *et. seq.* (FLSA) and N.R.S § 608.005. Specifically, Plaintiff claims that she
19 regularly worked in excess of 40 hours per week, but was not paid overtime.

20 In addition to her FLSA claims, Plaintiff asserts a claim for violation of Nevada's Deceptive
21 Trade Practices Act, N.R.S. § 598 *et. seq.* ("NDTPA"). Defendants have moved for judgment on the
22 pleadings on the NDTPA claim.

23 **II Discussion**

24 **A. Legal Standard for Judgment on the Pleadings**

25 Fed. R. Civ. P. 12(c) is "functionally identical" to Rule 12(b)(6), and the "same standard of
26 review" applies to a motion brought under either rule. Cafasso v. General Dynamics C4 Systems,

1 Inc., 637 F.3d 1047, 1054 n.4 (9th Cir. 2011). Judgment on the pleadings or dismissal under Rule 12
2 is appropriate when, even if all material facts in the pleading under attack are true, the moving party
3 is entitled to judgment as a matter of law. Hal Roach Studios, Inc. v. Ricard Feiner & Co., Inc., 896
4 F.2d 1542, 1550 (9th Cir.1989).

5 To survive a motion of this type the claim must include “a short and plain statement of the
6 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); Bell Atlantic Corp. v.
7 Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it
8 demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause of
9 action.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citations omitted). “Factual allegations must be
10 enough to rise above the speculative level.” Twombly, 550 U.S. at 555. Thus, to survive a motion to
11 dismiss, a complaint must contain sufficient factual matter to “state a claim to relief that is plausible
12 on its face.” Iqbal, 556 U.S. at 678 (citation omitted).

13 In Iqbal, the Supreme Court clarified the two-step approach district courts are to apply when
14 considering motions to dismiss. First, a district court must accept as true all well-pled factual
15 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.
16 Id. at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory
17 statements, do not suffice. Id. at 1949. Second, a district court must consider whether the factual
18 allegations in the complaint allege a plausible claim for relief. Id. at 1950. A claim is facially
19 plausible when the plaintiff’s complaint alleges facts that allows the court to draw a reasonable
20 inference that the defendant is liable for the alleged misconduct. Id. at 1949. Where the complaint
21 does not permit the court to infer more than the mere possibility of misconduct, the complaint has
22 “alleged—but not shown—that the pleader is entitled to relief.” Id. (internal quotation marks
23 omitted). When the claims in a complaint have not crossed the line from conceivable to plausible,
24 the complaint must be dismissed. Twombly, 550 U.S. at 570.

1 2. NDTPA

2 Courts in this district have held that the elements of a NDTPA violation are as follows: (1) an
3 act of consumer fraud by the defendant (2) causing plaintiff (3) damage. See Picus v. Wal-Mart
4 Stores, Inc., 256 F.R.D. 652 (D.Nev.2009). N.R.S. § 598.0923(3), provides that “A person engages
5 in a ‘deceptive trade practice’ when in the course of his business or occupation he knowingly: ...
6 [v]iolates a state or federal statute or regulation relating to the sale or lease of goods or services.”
7 The NDTPA was enacted “primarily for the protection of consumers” Sobel v. Hertz Corp., 698
8 F.Supp.2d 1218, 1224 (D.Nev., 2010). It also provides protection for businesses against unfair
9 competition. See Southern Service Corp. v. Excel Bldg. Services, Inc., 617 F.Supp.2d 1097, 1099
10 (D.Nev., 2007) (citing NRS 598.0953(1)). Courts in other jurisdictions have consistently held that
11 deceptive trade practice laws do not apply to employment cases. See, e.g., Anderson v. Sara Lee
12 Corp., 508 F.3d 181, 190 (4th Cir. 2007) (North Carolina deceptive trade practices act does not
13 extend to employment disputes); Dobbins v. Scriptfleet, Inc., 2012 WL 601145, 4 (M.D.Fla. ,2012)
14 (Florida’s deceptive trade practices act does not apply where there is no consumer relationship
15 between employee and employer).

16 Plaintiff argues that her unpaid wages claim gives rise to a cause of action under the NDTPA
17 because “an employer hires the employee to assist him in the sale or lease of goods or services.”
18 Plaintiff’s claim does not plausibly suggest that Defendants are liable under the NDTPA. To adopt
19 Plaintiff’s broad definition of “relating to the sale or lease of goods or services” would expand the
20 NDTPA far beyond its intended scope. Plaintiff fails to cite a single case from this jurisdiction, or
21 any of the numerous jurisdictions with similar deceptive trade practices acts, permitting an employee
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1 to sue an employer under this theory.¹ Accordingly, judgment on the pleadings for this claim is
2 granted.

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4 B. Attorney's Fees

5 Defendants request attorney's fees pursuant to N.R.S. §18.010(2), for the cost of bringing this
6 Motion. Defendants argue that the NDTPA claim is groundless and led to a waste of judicial
7 resources. The Court declines to award fees in this case. However, Plaintiff's counsel is cautioned
8 that similar attempts to assert unsupported legal arguments will result in sanctions.

9 III. Conclusion

10 **IT IS HEREBY ORDERED** that Defendants' Motion for Judgment on the Pleadings (#13)
11 is **GRANTED**.

12 **IT IS FURTHER ORDERED** that Plaintiff's Claim under N.R.S. § 598 *et. seq.* is dismissed
13 with prejudice.

14 DATED this 19 day of October 2012.

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18 Kent J. Dawson
19 United States District Judge
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23 ¹ Plaintiff cites Garcia v. Interstate Plumbing & Air Conditioning, LLC, 2011 WL 468439, *8 (D.Nev., 2011).
24 In Garcia Plaintiff's counsel represented a group of plaintiffs in a wage dispute. Judge Jones granted judgment as a
25 matter of law on a number of plaintiff's claims. He also granted leave to amend to add a number of claims, including a
26 NDTPA claim. However, the pleadings in Garcia did not identify the facts on which the NDTPA claim would be based
or address the merits of the claim. Further, the plaintiff's request for leave to amend did not include a proposed amended
complaint, and Judge Jones provided absolutely no analysis of the merits of an NDTPA claim. This Court finds nothing
persuasive in the fact that Judge Jones, applying the generous standards associated with amendment, allowed Plaintiff's
counsel to amend the Garcia complaint to add this claim.